PROPERTY—OWNERSHIP OF STOCK QUOTATIONS—TICKER SERVICE—The incidents of the ownership of market quotations of stocks, bonds and commodities generally are the subject of considerable dispute. It is settled that such quotations are property, but like any other sort of literary property, the common-law right to their sole possession exists only until they are published so as to be given to the world.[1] The English law permits printed market quotations to be copyrighted,[2] but the American law has never gone so far as to grant this privilege to collectors and distributors of quotations.[3] However, protection to a certain extent is given by judicial determination of the principle that mere communication to a subscriber for his own use and that of his customers, and for the purpose of attracting trade to the subscriber, is not such a publication as to deprive the owner of his right to exclude others not authorized by him to receive quotations, from their use.[4] Accordingly the courts will restrain the publication or sale of quotations by one who has obtained them surreptitiously from a duly entitled subscriber or distributor.[5] So far it is clearly determined that market quotations are a species of property, may be owned and enjoyed as such, and that the courts will protect the owners in their use and enjoyment.

But when there arises the question of sale or distribution of stock quotations to individuals outside of the owners who were originally entitled, we find the law in an unsatisfactory and unsettled condition. Varying views as to the nature of Stock Exchanges and Boards of Trade, as to the duties of such associations towards the public generally, and as to the control such bodies may retain over market quotations when they have sold them or granted the right to distribute them to others, all add their quota to the confusion.

The case of *Western Union Telegraph Co.* v. *Foster*[6] is the most recent judicial expression on the subject. The New York

[1] Exchange Tel. Co. v. Gregory, L. R. 1896, 1 Q. B. 147; Board of Trade v. Christie Grain, *etc.*, Co., 198 U. S. 236 (1905); Chamber of Commerce v. Wells, 100 Minn. 205 (1907); Dodge Co. v. Construction Information Co., 183 Mass. 62 (1903); Kiernan v. Manhattan Quotation Tel. Co., 50 How. Pr. 194 (N. Y. 1875).

[2] Exchange Tel. Co. v. Gregory, *supra*, note 1.

[3] National Tel. News Co. v. Western Union Tel. Co., 119 Fed. 298, 56 C. C. A. 198 (1902). Such matter is not the "fruit of intellectual labor."

[4] Board of Trade v. Christie Grain, *etc.*, Co., *supra*, note 1; Board of Trade v. Kinsey, 130 Fed. 1507, 64 C. C. A. 669 (1904); McDearmott Commission Co. v. Board of Trade, 146 Fed. 961, 77 C. C. A. 479 (1906); Board of Trade v. Cella Commission Co., 145 Fed. 28, 76 C. C. A. 28 (1906).

[5] Cases cited in note 4.

[6] 113 N. E. 192, P. U. R. 1916 F, p. 176 (Mass. 1916).

Stock Exchange agreed to collect and tabulate continuous quotations of sales on its floor, and furnish them to the Telegraph Company. The company paid a fixed yearly sum for this, and acquired the right to distribute these quotations to its patrons, on terms of its own. The contract with the Stock Exchange provided, however, that all applications to the Telegraph Company for ticker service should be made in duplicate on a particular form, one to be forwarded to the exchange and unless the exchange approved of the applicant, the company was to refuse him service. Foster, in the city of Boston, applied on the regular forms for ticker service; the exchange refused to approve Foster's application, whereupon the Telegraph Company refused to install a ticker in his office. Foster then applied to the Massachusetts Public Service Commission for an order compelling the company to furnish him the service, which order was duly granted by the commission.[7] The company appealed to the Supreme Judicial Court, which upheld the order of the commission, and decreed its enforcement. The court, in an opinion delivered by Mr. Chief Justice Rugg, based its decision on the ground that whatever property right the company acquired in the quotations was purely incidental to its functions as a public utility, and as such under the Public Utilities Law was subject to the control and regulation of the commission; that the company was obliged to serve all applicants for ticker service without unlawful discrimination; and that the contract between the Telegraph Company and the Stock Exchange could not be pleaded in bar of a valid exercise of the police power under the statute.

The court conceded that the stock exchange was a voluntary association with the right to dispose of its property as it might see fit, to make its quotations known to some and denied to others. On this point there is a substantial dispute. A line of cases following the doctrine of *Munn* v. *Illinois*,[8] holds that the matter of furnishing quotations by an exchange or board of trade is so impressed with a public interest that discrimination in serving all those who are willing to pay for service and abide by reasonable regulations of the exchange, is unlawful.[9] Even under such a view, no case has gone so far as to hold that the exchange may not withhold its quota-

[7] Mass. Laws 1913, Chap. 784, Sec. 2 (c): "The commission shall . . . have general supervision and regulation of, and jurisdiction and control over, the following services, when furnished or rendered for public use within the commonwealth . . . c. The transmission of intelligence within the commonwealth by electricity, by means of telephone lines or telegraph lines or any other method or system of communication, including the operation of all conveniences, appliances, instrumentalities, or equipment utilized in connection therewith or appertaining thereto."

[8] 94 U. S. 113 (1876).

[9] New York, *etc.*, Exchange v. Board of Trade, 127 Ill. 153 (1889), the leading case; Western Union Tel. Co. v. State, 165 Ind. 492 (1905).

tions altogether from everyone.[10] Other cases prefer the view assented to in *Western Union v. Foster.*[11]

The court then decides that the transaction between the exchange and the telegraph company was a sale; and the quotations, therefore, were the sole property of the company. The company being a company for the "transmission of intelligence by electricity" is by statute subject to the regulations and control of the public service commission, and may be made to serve the public, even in its ticker service, without discrimination. The distribution of market quotations by ticker service, when the company has acquired the quotations for itself, by purchase from the exchange or by collection by its own agents on the floor of the exchange, is evidently outside of its regular business as a carrier of messages for hire, and it might be supposed that the same rules governing the company as a sort of common carrier would not apply to the case of an independent venture on its own account, such as this. But the peculiar language of the Massachusetts statute evidently covers the case in hand, and since the court holds that the transaction was a sale to the company, the contract cannot prevail against the words of the statute. It would seem somewhat illogical to hold that the exchange may communicate its information to others upon whatever conditions it chooses, and then by legal proceedings compel the company to violate the condition upon which it receives such information, and some cases have so held.[12] But probably the weight of authority sustains the view of the court, that when you deal with a quasi-public corporation you subject your dealings with it to its limitations as such a corporation.

The danger in the application of the principle laid down by the court is the possibility of smoothing the way for bucket shop proprietors. It was strenuously argued by counsel for the appellant that the only way to obviate this evil is to allow the exchange to decide arbitrarily who should or should not be a recipient of service. And there is merit in the contention. As a practical matter the bucket shop prospers during an unsettled and varying market. A long, steady market is fatal to its success. It is settled that neither a stock exchange nor a telegraph company is obliged to give ticker

[10] It was admitted in New York, *etc.*, Exchange v. Board of Trade, *supra*, note 9, that the Board of Trade had the right at any time to cease furnishing quotations altogether.

[11] Commercial Tel. Co. v. Smith, 47 Hun. 494 (N. Y. 1888); *In re* Renville, 46 App. Div. 37 (N. Y. 1899), specifically denying the application of the doctrine of Munn v. Illinois to the stock exchange cases, and answering the reasoning in New York, *etc.*, Exchange v. Board of Trade, *supra*, note 9; Wilson v. Commercial Tel. Co., 18 N. Y. S. R. 78; 3 N. Y. Supp. 633 (1888); Sterrett v. Phila. Local Tel. Co., 18 Phila. 316 (1886).

[12] Sterrett v. Phila. Local Tel. Co., *supra*, note 11; Bradley v. Western Union Tel. Co., 8 Ohio Dec. (Reprint) 707 (1883); *In re* Renville, *supra*, note 11.

service to a bucket shop and that it is a reasonable requirement to oblige an applicant to sign an agreement not to conduct a bucket shop,[13] but the practical difficulty is to prove that an applicant intends to conduct one, and the length of time required to investigate and prove the fact that an apparently *bona fide* brokerage office is in reality a bucket shop. Two months of an active market and the damage is done. The court commenting on this argument says, "the accomplishment of a laudable result does not justify the use of means condemned by a public board acting in accordance with a legislative enactment."

The business of the country, and indeed of the whole world under recent conditions, with all of its ramifications, has come to depend on the activities of our various great exchanges and boards of trade, to such an extent that they can no longer be regarded as purely private associations of persons coming together for their own convenience. The public's standard of values is determined by their dealings and reports, they do have public duties and public uses, and it is becoming more and more necessary that uniformity of treatment in regard to them should be brought about. We suggest federal incorporation and regulation as the best possible solution under the circumstances.

T. L. H.

PROPERTY—RULE AGAINST PERPETUITIES—PURPOSE AND APPLICATION—The Rule against Perpetuities, as it exists today in the English and American systems of law, is the result of a growth extending over a number of years, and having its beginning in comparatively modern times: that is, it is a branch of the law which has arisen since the middle of the sixteenth century. Prior to the *Statute of Uses* (1535),[1] and the *Statute of Wills* (1540),[2] there seems to have been no discussion as to remoteness, when related to the creation of estates and interests. This was probably because there was no necessity for it in the transactions of the day. True, in conveying realty, no fee simple could be given to commence *in futuro*—but this was because of the peculiar nature of livery of seisin. After the two statutes, above referred to, a doctrine arose which laid down the rule that there could not be a "possibility on a possibility."[3] The effect of this was to retard the idea involved in the Rule against Per-

[13] Board of Trade v. Christie, *etc.*, Co., *supra*, note 1; Stock Exchange v. Board of Trade, 196 Ill. 396 (1902); Board of Trade v. Cella Commission Co., *supra*, note 4; Sullivan v. Postal Tel. Co., 123 Fed. 411, 61 C. C. A. 1 (1903); Illinois Commission Co. v. Cleveland Tel. Co., 119 Fed. 301 (1902); Smith v. Western Union Tel. Co., 84 Ky. 664 (1887).

[1] 27 Hen. VIII, Chap. 10.

[2] 32 Hen. VIII, Chap. 1.

[3] Rector of Chedington's Case, 1 Co. 153a (Eng. 1598), by Lord Popham.